UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re:	Chapter 11 Cases
ADINATH CORP. and SIMPLY FASHION STORES, LTD.,[1]	Case No. 15-16885-LMI (Jointly Administered)
Debtors. _____/	

DEBTORS' OMNIBUS REPLY TO THE OBJECTIONS TO DEBTORS' MOTION FOR APPROVAL OF DEBTORS' ENTRY INTO AN AGENCY AGREEMENT FOR THE CONDUCT OF STORE-CLOSING SALES

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") hereby file this omnibus reply (the "**Reply**") to the objections filed by (i) the Official Committee of Unsecured Creditors (the "**Committee Objection**") [ECF No. 163], (ii) Commander Signs, Inc. (the "**Commander Objection**") [ECF No. 166], (iii) DDR Corp. and Weingarten Realty Investors (the "**DDR/Weingarten Landlord Objection**"[2]) [ECF No. 167], (iv) Ramco-Gershenson Properties, LP and Wyoming Mall, Ltd. (the "**Ramco Landlord Joinder**") [ECF No. 168], (v) Mahavir International, Inc. (the "**Mahavir Objection**") [ECF No. 174], (vi) UCR Asset Services and AMBC Perring LLC (the "**UCR Landlord Objection**") [ECF No. 175], and (vii) New Orleans (River Commons) DDP, LLC, Walnut Hill Plaza Associates, LLC and WHLR-Tampa Festival, LLC (the "**New Orleans Landlord Objection**" [ECF No. 176], and together with the Committee Objection, Commander Objection, DDR/Weingarten Landlord

[1] The Debtors in these cases, along with the addresses and last four digits of each Debtor's federal tax identification number are: (i) Adinath Corp., 2110 N.W. 95th Avenue, Miami FL 33172 (4843); and (ii) Simply Fashion Stores, Ltd., 2500 Crestwood Boulevard, Birmingham, AL 35210 (6230).

[2] Upon information and belief, the Debtors understand that the DDR/Weingarten Landlord Objection has been resolved as a result of discussions between DDR Corp. and Weingarten Realty Investors and the Agent. In an abundance of caution, however, the Debtors are including their replies to the DDR/Weingarten Landlord Objection herein.

Objection, Ramco Landlord Joinder, Mahavir Objection, UCR Landlord Objection, collectively, the "**Objections**") to the *Debtor's Emergency Motion Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, and Bankruptcy Rule 6004 and 6006, and Local Rule 6004-1, for: (I) Approval of Procedures in Connection with the Sale of All or Substantially All of the Debtors' Assets; (II) Authorization to Enter Into Stalking Horse Agreement in Connection Therewith; (III) Approval of the Payment of Stalking Horse Protections; and (IV) The Setting of Related Auction and Hearing Dates* [ECF No. 39] (the "**Sale Motion**")[3] filed by Debtor Simply Fashion Stores, Ltd. ("**Simply Fashion**"). In support of this Reply, the Debtors state:

PRELIMINARY STATEMENT

By Order dated April 23, 2015 (the "**Bidding Procedures Order**") [ECF No. 83], the Court approved Bidding Procedures proposed by Simply Fashion to conduct a sale of its assets in a GOB sale (the "**Proposed Sale**"), with the Court conducting the Sale Approval Hearing on May 6, 2015. Simply Fashion's decision to sell its assets was one made well within the scope of its business judgment, as reflected in CRO Soneet Kapila's testimony at the April 20, 2015 hearing on the Sale Motion (the "**April 20 Hearing**"), as the most efficient means to maximize the value of those assets for the benefit of the estate and its creditors. As reflected by the authorities cited by Simply Fashion in the Sale Motion, bankruptcy courts *routinely* deem GOB sales like that being conducted here as consistent with the policy behind the Bankruptcy Code, and specifically section 363, of maximizing the value of a debtor's assets for the benefit of the estate and its creditors.

[3] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Stalking Horse Agreement attached as Exhibit "A" to the Sale Motion. Debtor Adinath Corp. is not a movant in the Sale Motion because, other than being the General Partner of Simply Fashion, it does not operate or have any assets that could be monetized.

Indeed, in its Bidding Procedures Order, the Court has found and determined, among other things, that Simply Fashion "has demonstrated a compelling and sound business justification for authorization to (i) enter the Stalking Horse Agreement to establish a minimum bidding price [*i.e.*, the Guaranteed Amount] for the [Merchandise and Owned FF&E] and (ii) to pay the combined break-up fee and expense reimbursement … under the terms and conditions set forth in the Stalking Horse Agreement." *See* Bidding Procedures Order, ¶ E at p.4. The Court further found and determined that "[e]ntry of [the Stalking Horse Agreement] is in the best interests of [Simply Fashion] and its estate, creditors, and interest holders and all other parties in interest herein." *Id.*, ¶ H at p. 5. In the face of the *unrebutted* showing made by Simply Fashion at the April 20 Hearing, as reflected in the above-quoted findings and determinations, as well as in the transcript of that Hearing, the objectors have objected to the Proposed Sale, yet they provide no alternative.

Why? Because there is no better alternative than the Proposed Sale. In their Objections, the Committee[4] and the other objectors fail to address the CRO's testimony as to why the Proposed Sale must proceed forthwith, including how delay will only engender a substantial reduction in the value of Simply Fashion's inventory to the detriment of the estate and its creditors.

At bottom, the Committee's challenge to the Proposed Sale is that it is purportedly being conducted for the sole benefit of the Debtors' senior secured lender, JNS INVT, LLC ("**JNS**"), for a price that may well end up being less than the pre-petition debt it is owed; the response to this contention is two-fold.

[4] Pursuant to negotiations between and among the Debtors, the Committee and the proposed Agent, the Debtors believe that the Committee Objection will be resolved prior to the hearing. In an abundance of caution, the Debtors are including their replies to the Committee Objection herein. Moreover the proposed Agent is currently in discussions with the objectors who are landlords to settle their objections.

First, notwithstanding the Committee's suggestion to the contrary, any claims that any party in interest, *including* the Committee, has or may have against JNS, including any challenge to the validity, priority or extent of JNS' liens, are preserved in the interim DIP financing order (the "**Interim DIP Financing Order**") [ECF No. 42, ¶23], and similar provisions will be included in the final DIP Financing Order, once entered. This obviates the Committee's concern that approval of the Proposed Sale will preclude "any opportunity for a meaningful and disinterested review of the multitude of insider and related-party transactions…." Objection at 2. Accordingly, any claim that *may* exist as against JNS, including a challenge to its liens as stipulated to by the Debtors, should not serve as a basis to challenge the Proposed Sale.

Second, the contention that the Proposed Sale may well net less than the prepetition debt owed to JSN is premature pending the conclusion of the sale process. Regardless, even assuming (as the Court did at the April 20 Hearing) that the ultimate sale price brings less than the debt owed to JNS, such a result should not serve as a basis to challenge the Proposed Sale either because, as the Court has already found and determined, "[t]he Debtor has demonstrated a compelling and sound business justification" for the Proposed Sale and it is "in the best interests of the Debtor and its estate, creditors, interest holders and all other parties in interest". *See* Bidding Procedures Order, ¶ E at p. 4, ¶ H at p. 5. In that regard, JNS has consented to the Proposed Sale, and therefore, at least one of the conditions imposed by Bankruptcy Code section 363(f) to approval of the Proposed Sale has been satisfied. Other courts, including from within the Eleventh Circuit, have approved sales of substantially all of a chapter 11 debtor's assets where the sale price is less than the debt owed to the senior secured lender where, like here, there is lender consent. *See, e.g., In re WRS Holding Co., et al.,* No. 8:14-bk-08588-CPM (Bankr. M.D. Fla. Oct. 30, 2014) [ECF No. 359] (approving a sale of substantially all of the debtors'

assets for $5 million where the senior secured lenders were owed prepetition debt in excess of $20 million where, like here, there was lender consent and the sale would maximize the value of those assets).

For these reasons, and other set forth below, the Court should overrule the Committee's Objection to the Proposed Sale, as well as the other Objections.

Background

On April 16, 2015 (the "**Petition Date**"), the Debtors commenced these chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

In his *Declaration in Support of First Day Pleadings* (the "**Kapila Dec.**") [ECF No. 22] filed on the Petition Date, CRO Soneet Kapila explained the reasons for the filing of these chapter 11 cases. Specifically, Mr. Kapila noted a substantial decrease in sales' volume beginning in 2012 due to the "great recession" which negatively impacted its clientele, as well as the failure in 2015 to meet sales projections due to unseasonably cold weather and a decrease in tax refunds received by its clientele. Kapila Dec., ¶¶ 35-36. Mr. Kapila recounted how the Debtors' financial situation was not unique, noting difficulties, including bankruptcy filings by other similarly situated clothing retailers. Kapila Dec., ¶ 37. Mr. Kapila explained that the Debtors commenced these chapter 11 cases "in order to preserve and maximize their enterprise value for the benefit of" all parties in interest, and that a sale of their assets, subject to higher and better offers, was the mechanism by which that value would be preserved and maximized. Kapila Dec., ¶¶ 41-42.

On April 22, 2015, the Office of the United States Trustee (the "**UST**") appointed an official committee of unsecured creditors—the Committee—to represent the interests of the Debtors' unsecured creditors in these chapter 11 cases. [ECF No. 79]

By Order dated April 17, 2015—the Interim DIP Financing Order—the Court approved, on an interim basis, debtor-in-possession financing from JNS in an amount not to exceed $1.25 million and the granting of liens in favor of JNS, including a super-priority administrative expense claim in respect of all obligations arising from the DIP financing. The Interim DIP Financing Order reflects that Debtors' acknowledgement of the pre-petition debt of approximately $9 million owed to JNS by Simply Fashion, and that such debt was secured by a prepetition continuing and unconditional first priority lien and security interest in all of Simply Fashion's assets. The Interim DIP Financing Order also authorized the use of JNS' cash collateral and provided replacement liens in favor of JNS in return for the use of its cash collateral.

Finally, the Interim DIP Financing Order provides that "[n]othing in his Interim Order shall prejudice the rights of a Statutory Committee, if granted standing by the Court…to seek…to assert claims against any Prepetition Lender or the Lender Parties on behalf of the Debtors, their estates, or their creditors, or to otherwise object to or challenge the findings, Debtors' Stipulations, or any other stipulations or findings herein…." Interim DIP Financing Order, ¶23.

By Order dated April 23, 2015—the Bidding Procedures Order—the Court approved Bidding Procedures for the sale of Simply Fashion's assets, including scheduling a potential Auction set for May 5, 2015 (which did not occur because there were no competing Qualified Bids), with the Court conducting the Sale Approval Hearing on May 6, 2015. As a part of the Bidding Procedures Order, the Court authorized Simply Fashion "to accept bids for any asset or combination of assets, to combine Qualified Bidders or Qualified Bids, and to implement such other arrangements at the Auction so as to maximize the value received by the estate at the

auction." Bidding Procedures Order, ¶5. While the UST did voice concerns over certain provisions in the Stalking Horse Agreement, the UST stated that it did not oppose a sale and, in fact, candidly (and correctly) acknowledged that a sale is "what needs to happen here," "that's *very clear*." Transcript of April 20, 2015 Hrg. at 148:20-23 (hereafter "Tr. at __") at 151:5-6, 8 (Italics added).

Argument

I. The Court should overrule the Committee Objection

Debtors' counsel aptly summed up the evidence in the record from the *unrebutted* testimony by Mr. Kapila—the only witness to take the stand at the April 20 Hearing—as follows:

> The evidence in the record is unrebutted: One, debtors are operating cash flow negative; two, yes, they are selling goods, perhaps at more than 27 and a half percent of retail, those proceeds are funding losses.
>
> A delay in the approval of the GOB and commencement of the GOB results in less money to the estate, after the inventory has been used to fund losses, and makes the sale less attractive to the GOB community because of the large number [247] of the stores, the expense of operating that any stores, and the less inventory there is on hand on the sale date….
>
> Its unrebutted in the record that there is no assurance of money to operate separate from the interim D.I.P. that's been approved.

Tr. at 153:8-25 through 154:1. Continuing, Debtors' counsel stated as follows:

> Mr. Kapila's testimony about the exigencies [of the situation] is unrebutted. Would we like more time? Sure. We don't have the money for more time. The deal is not going to get better.
>
> And the risk is not only…that the liquidators may pay less, it's that there may not be critical mass later with these far-flung stores, not clustered geographically, with this expense structure to warrant a bid.
>
> I don't know if that's going to happen. I don't want to get involved in a poker game with the liquidators. I'm comforted by Mr. Kapila's business judgment and his vast experience, that based on the facts as we know them now, we ought to proceed.

Tr. at 156:25 through 157:1-13.

At the conclusion of the evidence, the Court relayed its initial thoughts, including "that there is no question that Mr. Kapila has established that there are losses *that will only accelerate the longer the process is delayed*," Tr. at 158:5-8 (italics added), and agreement with Debtors' counsel's summary of what the evidence showed. Tr. at 160:15-16. The Court ultimately continued the Sale Hearing to May 6, 2015 so there would be time for the appointment of a committee, and to have its participation. That appointment has been made and the Committee is now fully engaged, filing its Objection to the Sale Motion.

The Committee notes that sale-related expenses concerning the protection and disposition of JNS' collateral not assumed by the Agent must be borne by the estate; the Committee identifies § 503(b)(9) claims, expenses associated with the distribution center and corporate headquarters, possible WARN Act liability and post-sale wind-down expenses. Objection, ¶5. However, as proffered by the Debtors, there should be no § 503(b)(9) claims, Tr. at 29:24-25;[5] other than payroll the largest expenditure associated with the distribution center and corporate headquarters, rent, is paid through June 30, Tr. at 64:9-10, by when the GOB sale should be concluded, Tr. at 32:10-13, and no further rent should be incurred. Tr. at 64:13-18, 86:4-9; and finally there is no WARN Act exposure for the estate. Tr. at 63:5-18. Post-sale wind-down expenses will be dealt with after the sale is concluded when it is determined how the Debtors, through CRO Kapila, will wind-down the estate.

The Committee states that it objects to the Sale Motion to the extent the Retail Price calculation does not provide a mechanism to prevent one-store pricing or "mismarking" of merchandise from artificially reducing the Guaranteed Amount. Committee Objection, n.3. Contrary to the Committee's assertion, made with citation to no authority, it is *not* "standard" for

[5] Undersigned counsel was unaware of a potential § 503(b)(9) claim by Commander, discussed below.

agency agreements to limit purchase price adjustments due to the "lower of" pricing discrepancies to merchandise on a per store basis. *Id.*

Equally misguided is the Committee's contention that "[n]o … business justification exists" for the Proposed Sale; that contention is belied by the findings and determinations made by the Court *after* considering Mr. Kapila's unrebutted testimony, that (i) Simply Fashion "demonstrated a compelling and sound business justification for authorization to … enter the Stalking Horse Agreement," Bidding Procedures Order, ¶ E at 4, and (ii) "[e]ntry of [the Stalking Horse Agreement] is in the best interests of [Simply Fashion] and its estate, creditors, and interest holders and all other parties in interest herein." *Id.*, ¶ H at p. 5.

Next, referencing non-binding Second Circuit authority,[6] the Committee states that because the Debtors propose to sell all of Simply Fashion's inventory, three weeks from the Petition Date, while there is no likelihood of a chapter 11 plan, the sale cannot be approved. Objection, ¶ 12. Given that (absent use of JNS' cash collateral and the proceeds of DIP financing approved on an interim basis), Simply Fashion lacks funds with which to continue operating, Tr. at 72:13-16, a sale of less than all of its inventory, at some later date, when the value of the inventory will significantly decrease, defies logic and common sense. *See* Tr. at 131:20-25 through 132:1-5 (counsel for DDR (as defined below) stated that he and his clients are "very familiar with the challenges this estate is facing, and the unfortunate reality…based on what I've heard today and our experience in these [types of retail] cases, *it makes sense to move as quickly as possible*, and to move forward at this pace because [delay] ... will, in all likelihood, *significantly decrease the value of this inventory*.") (italics added), Tr. at 119: 10-22 (Mr. Kapila testified that Simply Fashion is operating on a negative cash flow basis, which means that

[6] *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

inventory is being sold which is generating cash collateral, that that cash collateral in conjunction with the proceeds of the DIP financing are being used to fund losses; and that current sales deplete inventory which necessarily results in a reduction in the Guaranteed Payment under the Stalking Horse Agreement), Tr. at 5-8 (Mr. Kapila testifying that delay in the Proposed Sale will "clearly" be economically adverse to the estate in a material way).

To accept the proposition urged by the Committee that there is no likelihood of a chapter 11 plan, Objection, ¶ 12, would mean that there can be no circumstance where a bankruptcy court could confirm a post-sale chapter 11 liquidating plan which, of course, is without merit. *See, e.g., In re Piccadilly Cafeterias, Inc.,* 484 F.3d 1299 (11th Cir. 2007), *rev'd on other grounds*, 128 S. Ct. 2326 (2008).

The policy behind the Bankruptcy Code, in general, and section 363, in particular, is to maximize the value of a debtor's assets for the benefit of the estate and its creditors, which is precisely what will result from the Proposed Sale if approved. As explained above, and as reflected in the Court's findings and determinations in the Bidding Procedures Order, the estate would suffer substantial losses if the Proposed Sale was to be (further) delayed or worse yet had to be conducted in conjunction with confirmation of a chapter 11 plan as suggested by the Committee. Consequently, there is no effort to "circumvent chapter 11's plan confirmation requirements," Objection, ¶ 6, but instead to move with dispatch toward a GOB sale to maximize the values of Simply Fashion's assets.

Contrary to the Committee's contention, the Proposed Sale is, in fact, for the benefit of the estate as a whole, and the fact that the sale proceeds may well not be sufficient to satisfy JNS' senior secured liens does not preclude approval where JNS has consented to the sale. As explained above courts, including in this circuit, have approved assets sales in this type of

situation. Ultimately, the Committee offers no alternative, let alone a viable alternative, to the Proposed Sale. Under the Committee's approach, as it were, little value, if any, from Simply Fashion's inventory would be realized by the estate.

Indeed, the likely result of rejection of the Proposed Sale is that most, if not all, of the value of Simply Fashion's inventory would be irretrievably lost. The best that can be obtained in this admittedly difficult situation is what Simply Fashion has proposed—sale of its inventory to the Agent subject to higher and better offers. On the other hand if, as the Committee urges, the Proposed Sale is not approved, this case will quickly collapse, almost certainly convert to chapter 7, which would lead to the estate obtaining no more than liquidation value for Simply Fashion's inventory which, according to CRO Kapila, would mean "cents on the dollar." Tr. at 109:20-21.

Finally, there is no basis for the Committee's request that sale proceeds be retained by the Debtors given potential claims against JNS. To do so would be tantamount to a pre-judgment asset freeze regarding a damage suit prohibited by *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.,* 527 U.S. 308 (1999).

Based on the foregoing, the Court should overrule the Committee's Objection.

II. The Court should overrule the Landlord Objections

The Court should overrule the Landlord Objections filed by DDR Corp. and Weingarten Realty Investors (collectively, "**DDR**"), New Orleans (River Commons) DDP, LLC, Walnut Hill Plaza Associates, LLC and WHLR-Tampa Festival, LLC (collectively, "**New Orleans**"), Ramco-Gershenson Properties, LLP and Wyoming Mall, Ltd. (collectively, "**Ramco**") and UCR Asset Services and AMCB Perring LLC (collectively, "**UCR**," with DDR, New Orleans and Ramco, the "**Landlords**").[7] The proposed limitations on signage set forth in ¶¶ 8-11 of the

[7] At the April 20 Hearing, in response to a concern raised by DDR's counsel, Debtors' counsel stipulated that a proposed order approving the GOB sale would exclude reference to assignment of

DDR/Weingarten Landlord Objection, ¶¶ 12-14, 16 of the New Orleans Objection[8] and ¶¶ 12-15 of the UCR Landlord Objection will impair, not facilitate, the proposed GOB sale to the detriment of the estate.

Simply Fashion respectfully submits that the Court, like Simply Fashion, should defer to the long-standing and recognized expertise of Hilco and Gordon Brothers as to the appropriate signage to facilitate the contemplated sale, as well as the timing of such sales and other related issues raised by certain of the Landlords, *i.e.*, the scope and duration of the sales, the hours of the sales, keeping surrounding clear and orderly, etc. The potential harm to the estate from the limitations and conditions urged by the Landlords, as well as other conditions urged by the Landlords, including New Orleans and UCR, far outweighs the harm, if any, that would be fall the Landlords if the terms and conditions set forth in the Guidelines and Stalking Horse Agreement are approved.

If the Stalking Horse Agreement is approved, there should be complete protection from fines relating to any possible violations of any local ordinances or statutes (including lease restrictions), regarding all aspects of the GOB sale. This is because the Proposed Order authorizes the Proposed Sale despite any contrary local ordinances or statutes, or lease provisions. Accordingly, there is no basis for Simply Fashion to agree to indemnify the Landlords for any potential fines, or for relief based on any provision in any Lease contrary to the Proposed Sale and related Guidelines.

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leases, other than to provide that absent a separate order and for good cause shown, no assignments of leases would be sought in connection with the Proposed Sale. Tr. at 180:8-15.

[8] New Orleans states that it filed the New Orleans Landlord Objection as a precaution if and to the extent that it is unable to reach agreement with the Agent regarding contemplated sales at premises leased to Simply Fashion. New Orleans also filed a joinder to any objection filed by any other landlord, which would include the DDR Landlord Objection. Likewise, Ramco filed a joinder to any objections filed by any of the other Landlords—the Ramco Landlord Objection. Thus, argument contained herein should apply to all of the Landlords.

The Court should summarily reject the Landlords' proposed limitations on augmentation of Simply Fashion's inventory. Contrary to the Landlords' contention, and consistent with Mr. Kapila's unrebutted testimony at the April 20 Hearing, augmentation will, in fact, facilitate sales, and given the unbalanced inventory across the 247 stores the Landlords' suggestion that augmentation should *only* come from other stores is not well-taken. Equally misguided is the Landlords' contention that proceeds from the sale of augmented inventory should be included in applicable rent calculations; to do so would impair the estate as a whole to the detriment of a single creditor. Because there are no plans for "live auctions" at the contemplated GOB sales, there is no need for a prohibition on such sales as suggested by the Landlords.

Mr. Kapila and the Agent believe that the GOB sale should be concluded by June 30, 2015. The New Orleans Landlord contends that, absent its written consent, the sale should conclude by the earlier of June 30, 2015 of expiration of the time to assume or reject the underlying leases under Code section 365 (which would be June 15, 2015) as may be extended by the Court. The Court should not impose arbitrary deadlines on the GOB sale process, especially time limitations like June 15, 2015 urged by the New Orleans Landlord. Having said that, if the GOB sale process is not concluded by June 30, 2015, Simply Fashion will, in conjunction with discussions with the Agent, move the Court for an extension of time to complete the process subject to any objections by the New Orleans Landlord or other Landlords.

Simply Fashion has no objection to the New Orleans Landlord from moving for relief if it believes that Simply Fashion or the Stalking Horse have violated the Sale Guidelines, including on an expedited basis, subject to notice and the opportunity to object by Simply Fashion and the Stalking Horse.

With one exception, Simply Fashion does not object to the proposed revisions to the Proposed Sale Order suggested by the New Orleans Landlord in ¶ 22 of its New Orleans Landlord Objection which focuses upon consensual modification of the terms of the GOB Sale Guidelines by side letter agreements between the Agent and an affected landlord. The exception is the second bullet point in which the New Orleans Landlord proposes alternative revisions to ¶ 18 of the Proposed Sale Order which would allow Side Letters between the Agent and an affected landlord to override the rights of governmental entities. The Proposed Order was sent to all governmental entities, and they had comfort that Side Letters could not prejudice their rights. Accordingly, the Court should not require that ¶ 18 of the Proposed Sale Order be revised as reflected in the second bullet point in ¶ 22 of the New Orleans Landlord Objection to allow Side Letters to override the rights of governmental entities.

Finally, UCR requests payment of April stub rent; this is not a legitimate issue to prevent entry of the Proposed Sale Order because payment of that stub rent is provided for in the DIP Financing budget approved by the Court.

Based on the foregoing, the Court should overrule the Landlord Objections.

III. The Court Should Overrule the Mahavir Objection

In the Mahavir Objection, Mahavir International, Inc. ("**Mahavir**") recounts what appears to be circumstances—at this time only allegations—that purportedly form the basis of a claim against Swapnil Shah, Simply Fashion's President and CEO. Mahavir seeks entry of an order requiring the proceeds from the Proposed Sale be held by the Debtors pending a "full investigation of Swapnil's actions" and Mahavir's "potential claims."

To the extent that Mahavir determines it has a claim against Mr. Swapnil, a non-Debtor, such non-stayed Mahavir can seek to proceed in the ordinary course and there is no basis to

require Simply Fashion to retain proceeds from the Proposed Sale. These claims would be between non-debtors and irrelevant to the Proposed Sale, as to which Mahavir does not object. To the extent that Mahavir determines it has a claim against Simply Fashion, Mahavir is free to file a claim against the estate like every other creditor so there is equally no basis to require Simply Fashion to retain proceeds from the Proposed Sale in that circumstance.

Based on the foregoing, the Court should overrule the Mahavir Objection.

IV. The Court should overrule the Commander Objection

The Court should overrule the Commander Objection filed by Commander Signs, Inc. ("**Commander**"). Commander objects to the Proposed Sale if and to the extent the Debtors seek to liquidate signs delivered between 21 and 45 days of the Petition Date (valued by Commander at $12,647.64), free and clear of Commander's alleged rights of reclamation under Code section 546(c) or the right to receive adequate protection and am administrative expense claim under Code section 503(b)(9). Because the Debtors do not intend to liquidate signage sold to them by Commander at this time, the Court can and should overrule the Commander Objection without prejudice to considering it if and when those signs are to be sold.

Based on the foregoing, the Court should overrule the Commander Objection.

V. Conclusion

For the reasons set forth above, the Court should overrule the Objections and approve the Proposed Sale with no requirement that the sale proceeds be retained by the Debtors.

Dated: May 5, 2015

Respectfully submitted,

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